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NO. 75-801

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS M. SPENCE,
Petitioner

vs.

STATE BAR OF SOUTH CAROLINA
STATE OF SOUTH CAROLINA, AND
BOARD OF COMMISSIONERS ON
GRIEVANCE AND DISCIPLINE OF
THE STATE BAR OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

HARMON T. SMITH, JR.
P. O. Box 1276
380 Green Street
Gainesville, Georgia 30501

Attorney for Petitioner

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6

State of South Carolina's violation of Petitioner's right to due process and equal protection under the U.S. Const. Amend XIV in a disbarment proceeding which issues are framed as follows:

(1) Whether due process and equal protection of the laws has been denied to Petitioner who gained his original admittance to the Bar through the Courts of South Carolina but later became a resident of the State of Georgia, and a member in good standing of the State Bar of Georgia, through comity and who was disbarred from the South Carolina Bar without said court obtaining personal jurisdiction over Petitioner.

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(2) Whether due process and equal protection was denied Petitioner by the Supreme Court of South Carolina denying Petitioner's motion for a continuance at the show cause hearing before said Court, when said Continuance was based upon legal grounds and supported by an affidavit in proper form, all of which denied Petitioner an opportunity to be heard.

(3) Whether due process and equal protection has been denied Petitioner because the Supreme Court of South Carolina, under its Grievance Procedure, delegated all fact finding responsibilities to a three member panel, and thus denied Petitioner a full evidentiary hearing before the Supreme Court of South Carolina, the Court of original jurisdiction.

(4) Whether the South Carolina Grievance Procedure complies with the constitutional requirement of due process and equal protection in determining whether Petitioner can or cannot practice law in South Carolina by virtue of a procedure that affords no opportunity for review or appeal, no opportunity to offer evidence at either the show cause hearing before the full Board or before the Supreme Court of South Carolina and no opportunity, because of one hour limit, to effectively present evidence even if allowed to do so before the full Board or the Supreme Court.

(5) Whether due process and equal protection was denied Petitioner in the situation where he did not have a hearing before a fair and impartial panel, one of the members, Joseph O. Rogers, Jr., having sat on the 3 member panel after having previously served as an investigator, all in violation of Rule 31(b) of the Rule of Disciplinary Procedure adopted by the Supreme Court of South Carolina.

(6) Whether in a disbarment proceeding a lawyer, who is an officer of the Court, as opposed to a private citizen charged with a crime, has any less right to due process and equal protection under the Fourteenth Amendment of the United States Constitution simply because of his professional association with the Courts.

CONCLUSION 11

CERTIFICATE OF SERVICE 12

APPENDIX A (Order Granting Extension of Time for Filing Petition for Writ of Certiorari) 13

APPENDIX B (Decision of Supreme Court of South Carolina) 14

APPENDIX C (Rule on Disciplinary Procedure, Adopted by the Supreme Court of South Carolina, June 1, 1970 17

OR COPY

TABLE OF CONTENTS (Cont'd)

APPENDIX D (Letter from Joseph O. Rogers, Jr. 37

APPENDIX E (Letter from John Williams, Secretary, The Board of Commissioners on Grievances and Discipline 38

APPENDIX F (Show Cause Order, Supreme Court of South Carolina) 39

APPENDIX G (Motion for Continuance and Affidavit) 41

TABLE OF CASES AND OTHER AUTHORITIES CITED

Page

Konigsberg v. State Bar of California, et al, 353 U.S. 252, 77 S. Ct. 722 (1957) 7

In Re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222 9

Schware v. Board of Bar Examiners of State of New Mexico, 353 U.S. 232, 77 S. Ct. 752 (1957) 8

Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S. Ct. 1175 (1963) 7

Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed 565 7

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NO.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF SOUTH CAROLINA

THOMAS M. SPENCE, Petitioner, prays to this Honorable Court that a Writ of Certiorari issue to review the judgment of the Supreme Court of South Carolina which was final on July 8, 1975, no rehearing being requested.

OPINIONS BELOW

The Supreme Court of South Carolina filed its opinion on July 8, 1975. (Appendix B).

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JURISDICTION

The Judgment of the Court of Appeals became final on July 8, 1975, when no motion for rehearing was filed within ten (10) days from said date. Time for filing Petition for Writ of Certiorari was extended to December 5, 1975 by an order of the United States Supreme Court dated October 9, 1975. (Appendix A). The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Section 1257(3) since this is a case where review of a judgment of the Supreme Court of South Carolina is sought by Writ of Certiorari.

QUESTIONS PRESENTED

This case presents the issues of due process and equal protection under the *U.S. Const. Amend. XIV*, which issues are framed as follows:

(1) Whether due process and equal protection of the laws has been denied to Petitioner who gained his original admittance to the Bar through the Courts of South Carolina but later became a resident of the State of Georgia, and a member in good standing of the State Bar of Georgia, through comity, and who was disbarred from the South Carolina Bar without said Court obtaining personal jurisdiction over Petitioner.

(2) Whether due process and equal protection was denied Petitioner by the Supreme Court of South Carolina denying Petitioner's Motion for a Continuance at the show cause hearing before said Court, when said continuance was based upon legal grounds and supported by an affidavit in proper form, all of which denied Petitioner an opportunity to be heard.

(3) Whether due process and equal protection has been denied Petitioner because the Supreme Court of South

Carolina, under its grievance procedure, delegated all fact finding responsibilities to a three member panel, and thus denied Petitioner a full evidentiary hearing before the Supreme Court of South Carolina, the court of original jurisdiction.

(4) Whether the South Carolina grievance procedure complies with the constitutional requirement of due process and equal protection in determining whether Petitioner can or cannot practice law in South Carolina by virtue of a procedure that affords no opportunity for review or appeal, no opportunity to offer evidence at either the show cause hearing before the full Board or before the Supreme Court of South Carolina and no opportunity, because of one hour limit, to effectively present evidence even if allowed to do so before the full Board or the Supreme Court.

(5) Whether due process and equal protection was denied Petitioner in the situation where he did not have a hearing before a fair and impartial panel, one of the members, Joseph O. Rogers, Jr., having sat on the 3 member panel after having previously served as an investigator, all in violation of Rule 31(b) of the Rule of Disciplinary Procedure adopted by the Supreme Court of South Carolina.

(6) Whether in a disbarment proceeding, a lawyer who is an officer of the court, as opposed to a private citizen charged with a crime, has any less right to due process and equal protection under the Fourteenth Amendment of the United States Constitution simply because of his professional association with the Courts.

CONSTITUTIONAL PROVISIONS INVOLVED

Due process and equal protection of laws under the Fourteenth Amendment of the United States Constitution.

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STATEMENT OF THE CASE

The record in this case consists of the record and transcript of the proceedings before the Board of Commissioners on Grievance and Discipline of the State Bar of South Carolina which is on file with the Clerk of the Supreme Court of South Carolina.

Petitioner in this case was disbarred by the Supreme Court of South Carolina, pursuant to the Supreme Court of South Carolina's Rule of Disciplinary Procedure (Appendix C), upon the recommendation of the Board of Commissioners on Grievance and Discipline.

The original hearing was conducted by Edward M. Royal, Joseph O. Rogers, Jr., George F. Coleman, a three (3) member panel on August 13, 1974 and September 19, 1974, with Petitioner representing himself. One of panel member, Joseph O. Rogers, the record reflects, had previously investigated the matter (Appendix D), but served on Panel in violation of Rule 31(b) of the Rules of Disciplinary Procedure (Appendix C). The panel report was filed with the South Carolina Supreme Court on March 17, 1975. In July of 1973, the original complaint was filed; thereafter in June of 1974, an amended complaint was filed and on July 23, 1974, notice of the August 13th hearing, before the 3 member panel, was sent out, affording Petitioner only twenty (20) days before the scheduled hearing.

At the August 13, 1974 hearing Petitioner specially appeared, representing himself. Petitioner stated to the Panel that he could not afford counsel (T-25). Petitioner's special appearance was accompanied by a written Answer, Motion to Dismiss for Lack of Jurisdiction and Motion to Continue the proceedings before the panel in order to adequately

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prepare his defense to the recently amended complaint. All defenses and motions were denied by the Panel and adopted by the Supreme Court of South Carolina (Appendix B).

On March 10, 1975, Petitioner received a letter stating that the disbarment had been recommended by the Panel and the full Board would meet in the Supreme Court Building on April 11, 1975, at which time Petitioner would have *one hour* to appear in opposition. (Appendix E). On May of 1975, Petitioner was notified that he was ordered to show cause before the Supreme Court of South Carolina why the report of the Board of Commissioners should not be confirmed (Appendix F).

Before the Supreme Court of South Carolina the Petitioner made a special appearance and filed an Answer, Motion to Vacate, and Motion for Continuance (Appendix G). The Motion for Continuance was grounded upon an affidavit in proper form, stating that the Petitioner's health would be jeopardized if he appeared on June 11, 1975, signed by a Georgia physician and was sworn before a Notary Public of the State of Georgia. The continuance was summarily denied. (Appendix B). An Order of Disbarment was entered July 8, 1975 (Appendix B). The time for filing a Motion for Rehearing expired ten days thereafter. Petitioner applied for an extension of time to file this application for a Writ of Certiorari within the original ninety (90) days of the South Carolina final decision and said extension was granted to and including December 5, 1975.

All jurisdictional, due process and equal protection issues were raised by Petitioner by pleadings or motions, with the motions, either being oral, in which case they are contained in the transcript, or written, in which case they were filed as part of the record. All motions and defenses were denied

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by the Panel and the Supreme Court of South Carolina (Appendix B).

REASONS FOR GRANTING THE WRIT

GENERALLY

The rights of private citizens involved in civil and criminal proceedings are well defined, but as in the case of the cobbler who allows his family to go without shoes, so has the lawyer in South Carolina created a grievance procedure that is rank with due process and equal protection violations; which at this time, as in no other time, should be reviewed by the Highest Court for the purpose of answering the issues posed by this Petitioner and for the further reason that no other appellate review is made available to Petitioner by the State of South Carolina.

(1) Whether due process and equal protection of the laws has been denied to Petitioner who gained his original admittance to the Bar through the Courts of South Carolina but later became a resident of the State of Georgia, and a member in good standing of the State Bar of Georgia, through comity, and who was disbarred from the South Carolina Bar without said court obtaining personal jurisdiction over Petitioner.

Petitioner first began his legal career in South Carolina and first became a member of the South Carolina Bar. Later in life he decided to change his residence to the State of Georgia and by virtue of comity, he was admitted to the Georgia Bar, based upon his membership in the South Carolina Bar.

Upon instituting the South Carolina Disbarment Proceedings, the Petitioner was a bona fide resident of the State of Georgia. The means of obtaining jurisdiction over Petitioner was by virtue of substituted service, the legal reasoning being that a disbarment proceeding is *In Rem* as opposed to *In Personam*. The issue on jurisdiction generates into one of whether the proceeding is one against the piece of paper, called a license, or whether it goes to the very right of a man to practice his chosen and earned profession.

The question of jurisdiction of a state court over a non-resident in these type proceedings has not been expressly ruled upon; however, there are numerous cases that have stated that the practice of law is a right and not merely a privilege affording Fourteenth Amendment rights of due process and equal protection. *Konigsberg v. State Bar of California*, et al, 353 U.S. 252, 77 S. Ct. 722 (1957); *In Re Ruffalo*, 390 U.S. 544, 88 S. Ct. 1222; *Schware v. Board of Bar Examiners of State of New Mexico*, 353 U.S. 232, 77 S. Ct. 752 (1957); *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S. Ct. 1175 (1963).

There are also decisions that provide that the Courts of one state do not have jurisdiction over residents of another state. *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed 565.

In view of the above rulings of this Court, it would seem that disbarment proceedings would be *In Personma* proceedings, since a man's right to pursue his chosen profession and means of earning a livelihood is being taken from him, as opposed to the mere termination of a license.

Just as a non-resident citizen should not be required to defend a *In Personam* suit in another state in which he has no contacts, the non-resident lawyer should not be faced with such a dilemma in a disbarment proceeding which

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adjudicates his *right* to practice law.

(2) Whether due process and equal protection was denied Petitioner by the Supreme Court of South Carolina denying Petitioner's motion for a continuance at the show cause hearing before said Court, when said Continuance as based upon legal grounds and supported by an affidavit in proper form, all of which denied Petitioner an opportunity to be heard.

Denial of Petitioner's Motion for a Continuance, which was based upon illness of the Petitioner and substantiated by a sworn affidavit of a physician, is so flagrant that it needs no further argument. The State cannot take away Petitioner's right to practice law without following the due process requirements of the Fourteenth Amendment to the United States Constitution. The denial of the Motion for Continuance had the same effect as a denial of a hearing. *Schware v. Board of Bar Examiners of the State of New Mexico, Supra.*

(3) Whether due process and equal protection has been denied Petitioner because the Supreme Court of South Carolina, under its grievance Procedure, delegated all fact finding responsibilities to a three member panel, and thus denied Petitioner a full evidentiary hearing before the Supreme Court of South Carolina, the Court of original jurisdiction.

The South Carolina Grievance Procedure provides that a three member panel serves as a fact finding body under the control of the State Supreme Court. No evidence is

presented to the State Supreme Court other than by the transcript and by the record. Petitioner is entitled to a full evidentiary hearing before the body that ultimately and finally decides his fate. Due process and equal protection clause of the Fourteenth Amendment to the United States Constitution requires this safeguard.

(4) Whether the South Carolina Grievance Procedure complies with the constitutional requirement of due process and equal protection in determining whether Petitioner can or cannot practice law in South Carolina by virtue of a procedure that affords no opportunity for review or appeal, no opportunity to offer evidence at either the show cause hearing before the full Board or before the Supreme Court of South Carolina and no opportunity, because of one hour limit, to effectively present evidence even if allowed to do so before the full Board or the Supreme Court.

The Grievance Procedure in South Carolina provides for no appeal or de novo hearing. All that is available in the way of an appeal is a hearing before the full Board which allows arguments not exceeding one (1) hour and a hearing before the State Supreme Court which provides only for oral arguments, *if the Court desires to hear argument* (Appendix C at page 17). The State Supreme Court is not a Court of Review in these matters but the Court with original jurisdiction, and sits in judgment without the benefit of hearing the evidence in person and considering the testimony of each witness and their demeanor. As Judge Edwards said *In Re Ruffalo*, 370 F 2d at 462,

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> "Such procedural violations of due process would never pass muster in any normal civil or criminal litigation".

South Carolina's procedure would likewise never pass muster.

The procedure does not provide for a full evidentiary hearing before the Court that ultimately decides the issue nor is there a provision for an appeal; therefore, one would ask what is purpose of hearing before the South Carolina Supreme Court.

> (5) Whether due process and equal protection was denied Petitioner in the situation where he did not have a hearing before a fair and impartial panel, one of the members, Joseph O. Rogers, Jr., having sat on the 3 member panel after having previously served as an investigator, all in violation of rule 31(b) of the Rule of Disciplinary Procedure adopted by the Supreme Court of South Carolina.

Obviously, any hearing should be before fair and impartial judges of fact and law. The records clearly reflect that Joseph O. Rogers, Jr. had previously investigated Petitioner on one of the same issues before the Hearing Panel (Appendix D) but he denied it at the August 13, 1974 hearing, (Transcript, p. 30) and thus the Petitioner could not have had a fair and impartial hearing. The point is so elementary to our fundamental principles of law that no authority need be cited.

> (6) Whether in a disbarment proceeding a lawyer, who is an officer of the Court, as opposed to a private citizen charged with a crime,

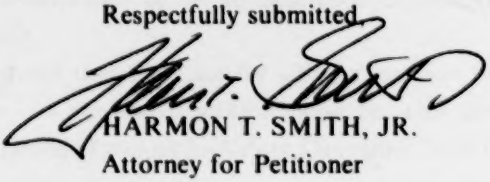
has any less right to due process and equal protection under the Fourteenth Amendment of the United States Constitution simply because of his professional association with the Courts.

The right to practice law is as important as any of the constitutional rights afforded the Petitioner. It is submitted that if he had committed a crime and had been prosecuted by the State of South Carolina his rights would have been better protected than they were under South Carolina Grievance Procedure.

CONCLUSION

For the reasons stated, Petitioner respectfully requests that his Writ of Certiorari be granted.

Respectfully submitted,



HARMON T. SMITH, JR.
Attorney for Petitioner
380 Green Street, N.E.
P.O. Box 1276
Gainesville, Georgia 30501
536-1313

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari has been served upon the State Bar of South Carolina, State of South Carolina and Board of Commissioners on Grievance and Discipline of the State Bar of South Carolina by depositing the same in the United States Mail with sufficient air mail postage prepaid and addressing same to Daniel R. McLeod, Attorney General of South Carolina, P.O. Box 11549, Columbia, South Carolina 39311.

This 3rd day of December, 1975.

HARMON T. SMITH, JR.

APPENDIX A

SUPREME COURT OF THE UNITED STATES

No. A-303

THOMAS M. SPENCE,
Petitioner

v.

STATE BAR OF SOUTH CAROLINA, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 5, 1975.

/s/ Warren E. Burger

Dated this 9th
day of October, 1975

APPENDIX B

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In The Matter of Thomas M. Spence . . . Respondent.

Opinion No. 20051
Filed July 8, 1975

Attorney General Daniel R. McLeod and Assistant Attorney General A. Camden Lewis, both of Columbia, for complaint.

Respondent represents himself.

PER CURIAM: After hearings pursuant to the Court's Rules of Disciplinary Procedure for attorneys, the Board of Commissioners on Grievances and Discipline filed with this Court its final certified report, including its recommendations.

Thereafter the respondent, an attorney, was ruled to show cause why the report of the Board should not be confirmed. The matter was set for a hearing on June 11, 1975. The respondent did not appear as directed, but sent to the Court under a "special appearance": (1) answer to complaint, (2) amended motion to vacate, and (3) a motion for a continuance. The showing made for a continuance was deemed insufficient, and the Court proceeded with the hearing in his absence. The contention that this Court is without jurisdiction to determine this matter is clearly without merit. We have considered the answer to complaint and the amended motion

to vacate, filed on the day of the hearing, which in effect brief the contentions of the respondent.

The Board found as a fact:

"1. The respondent was a practicing attorney in Laurens County, South Carolina, and is now an attorney in the State of Georgia but he retains his South Carolina license to practice law.

"2. In 1969 the respondent in handling an automobile accident case for his client, C. T. Anderson, held in trust for Mr. Anderson certain monies of which $600.00 was to settle Mr. Anderson's account with Rhodes Furniture, Inc. Respondent failed and refused to satisfy the account, resulting in a judgment against Mr. Anderson in the amount of $1,352,00. Respondent under the guise of attorney fees and costs converted the $600.00 held in trust to his own use.

"3. Respondent in early 1970 knowingly made false representations to his client, Calvin T. Anderson, about the value of stock, in order to take advantage of a superior position as an attorney at law and in order to gain $1,500.00 as personal profit from his overreaching and fraudulent representations.

"4. Respondent in his dealings with Fairfield Corporation and its predecessor corporations

demonstrated a total disregard of an attorney's ethical duty to act with candor and fairness both in his legal and his nonlegal business transactions."

The hearing panel concluded, and the Board unanimously agreed that the respondent was guilty of misconduct tending to pollute the administration of justice, and recommended disbarment. The findings, conclusions, and recommendation that the respondent be permanently disbarred, are fully warranted by the record before us. We find nothing in the evidence that warrants the Court's rejecting the recommendation.

IN THE MATTER OF THOMAS M. SPENCE

It is therefore ordered that the respondent Thomas M. Spence be, and he is hereby disbarred from the practice a Board of Commissioners on Grievances and Discipline. to the Clerk of the Supreme Court of South Carolina the certificate heretofore issued by the Court admitting him to practice.

Let this order be published with the opinions of this Court.

s/ Joseph R. Moss	C. J.
s/ J. Woodrow Lewis	A. J.
s/ Thos. P. Bussey	A. J.
s/ Bruce Littlejohn	A. J.
s/ J. B. Ness	A. J.

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s/ Frances H. Smith
Clerk, S. C. Supreme Court

APPENDIX C

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RULE ON DISCIPLINARY PROCEDURE

(As amended by the Supreme Court on June 1, 1970, such amendment to become effective on September 1, 1970. Changes are indicated by underscoring under Rule 8.)

1. *Creation of Board of Commissioners on Grievances and Discipline.*

There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. The said Board of Commissioners is empowered and charged to receive, entertain, inquire into, take proofs, make findings, and submit recommendations to this Court, as hereinafter provided:

(a) concerning complaints of misconduct, as hereinafter defined, on the part of any member of the bar of this state;

(b) concerning practices of any member of the bar of this state which tend to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute; and

(c) relating to petitions for reinstatement of the practice of law in this state.

2. *Constitution, Appointment and Tenure of the Board of Commissioners on Grievances and Discipline.*

The said Board of Commissioners shall be appointed by this court and shall consist of one (1) member of the bar of this state from each of the Judicial Circuits of the state. The term of office of each member of the said Board shall be three years, or until a successor has been appointed, and shall begin on the first day of October next following his or her appointment. Vacancy for any cause shall be promptly filled by appointment by this Court for the unexpired term. At the time of its initial appointments to membership, and each year thereafter, this Court shall designate one member as Chairman of the said Board of Commissioners and shall also designate a Secretary, who may, but need not, be a member of the said Board. Provided, however, should any member be engaged in a Panel or Panels at the expiration of his term, he shall continue to serve until completion of his work on such Panel or Panels as a member thereof despite the fact that his successor for all other purposes of the Board of Commissioners on Grievances and Discipline has been appointed and qualified.

3. *Rule Exclusive.*

All proceedings for the investigation of complaints and grievances involving alleged misconduct of any member of the bar of this state, all proceedings for the discipline of such members of the bar, and all proceedings for reinstatement to the practice of law in this state shall be brought, conducted and disposed of in accordance with the provisions of this rule.

4. *Misconduct Defined.*

Misconduct, as the term is used herein, means any one or more of the following:

(a) violation of any provision of the oath of office taken upon admission to the practice of law in this state;

(b) violation of any of the Canons of Professional Ethics as adopted by this court from time to time;

(c) commission of a crime involving moral turpitude;

(d) conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute.

(e) emotional or mental stability so uncertain, as in the judgment of ordinary men, would render a person incapable of exercising such judgment and discretion as necessary for the protection of the rights of others and/or their property or interest in property.

5. *Manner of Discipline.*

Every member of the bar found guilty of misconduct shall be disciplined, in accordance with the seriousness of such misconduct, by:

(a) permanent disbarment; or

(b) suspension for an indefinite period from the office of attorney at law, subject to reinstatement only as hereinafter provided; or

(c) public reprimand; or

(d) private reprimand.

6. *Effect of Discipline.*

A person disbarred shall never be readmitted to the practice of law in this state.

A person who, having voluntarily surrendered his license to practice, has been thereafter reinstated in the manner herinafter provided, or who, having been suspended for an

indefinite period from the office of attorney at law, has been thereafter reinstated in the manner hereinafter provided, shall be disbarred upon being found guilty of subsequent misconduct.

A person who, having been publicly reprimanded for misconduct, is thereafter found guilty of subsequent misconduct, shall be suspended for an indefinite period from the office of attorney at law, or permanently disbarred, depending upon the seriousness of such misconduct.

7. *Complaint.*

A complaint, as the term is used herein, means a formal written complaint alleging misconduct on the part of a member of the Bar of this State, who shall be designated therein as the respondent. The complainant may be (1) any individual, firm or corporation; (2) the grievance committee of a regularly organized local bar association; or (3) a member of the Board of Commissioners as provided in Section 31 of this Rule. Such complaint shall not be accepted for filing unless it is:

(a) verified under oath of the complainant; or

(b) signed by one or more members in good standing of the Bar of this State, as counsel for the complainant. Signature by such counsel shall constitute a representation that he or they (1) have investigated the charges of misconduct alleged the complaint, (2) believe reasonable cause exists to warrant a hearing on said complaint, and (3) have accepted the responsibility of prosecuting the complaint to conclusion. When the grievance committee of a regularly organized local bar association is the complainant, verification of the complaint shall be by the chairman of that committee.

By filing a Complaint with the Commission the Complain-

ant places himself or herself under these Rules and submits himself or herself to the jurisdiction of the Court and the Board of Commissioners. Any Complainant who shall, without just cause or excuse, after Notice of a hearing duly given, fail to appear before the Panel at the time prescribed in said Notice, shall render himself or herself subject to taxation of costs incurred for such hearing and shall be deemed in contempt of this Court and punishable accordingly; and any Complainant found by the Board, or any Panel hearing a Complaint, to have filed a complaint without just cause or excuse or to be otherwise motivated by malice or reason contrary to the spirit of this Rule, shall likewise be in contempt of this Court and punishable accordingly. If such Complainant be a lawyer he shall be subject to Complaint against him for misconduct.

Whenever a Complaint charges a Respondent with misconduct because of practicing law when not capable of exercising the discretion and judgment necessary as provided by Sec. 4(e), the Secretary shall forward with the copy of the Complaint mailed in accordance with this Rule, a Notice to Respondent that a Guardian ad Litem must be, within twenty days, appointed in his behalf by the Clerk of the Court on Petition by Respondent or someone in behalf of Respondent, and in the event Respondent fails to have a Guardian ad Litem so appointed, the Commission will petition the Clerk of this Court for such appointment.

8. *Filing of Complaint; Procedure Thereon.*

All complaints shall be filed in quadruplicate with the Secretary of the Board of Commissioners. If the said Board

of Commissioners shall find that the complaint, upon its face, does not state facts sufficient to charge misconduct as herein defined, the said complaint shall be dismissed, and the Secretary of the Board shall so notify the complainant. Otherwise the said Secretary shall forthwith cause to be sent to the respondent by registered mail a copy of said complaint, together with a notice, signed by the said Secretary, requiring the respondent, within twenty (20) days after the mailing of such notice, to file with the Board, in quadruplicate, his answer to the complaint, and to serve a copy of said answer upon the complainant or his counsel of record. The answer shall be signed by the respondent or by his counsel, or by both, and may, but need not be, verified.

The Secretary shall also forward to the resident judge of the attorney a copy of said complaint and any answer filed by respondent or his counsel. Thereafter the Secretary shall notify the resident judge of the disposition by the Board. All such communications shall be confidential except as between the resident judge and the presiding judge of the Circuit or any county court judge within the Circuit.

9. *Hearing by Panel of Three Commissioners.*

After respondent's answer has been filed, or the time has expired within which respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice to complainant and respondent or their counsel, by a panel of three (3) Commissioners appointed by the Chairman of the said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. No member of such panel shall be a resident of the Judicial

Circuit from which the complaint originated, or of the Judicial Circuit in which the respondent resides at the time of the filing of the complaint. The Chairman of the Board of Commissioners may, whenever he deems it advisable, request the Attorney General's Office to handle the prosecution of a claim before the hearing panel.

10. *Duty of the Panel.*

(a) If the panel shall find that the charges in the complaint are not supported by the evidence or do not merit the taking of disciplinary action, the complaint shall be dismissed; and such dismissal shall be reported to the Secretary of the Board of Commissioners, who shall thereupon so notify the respondent, the complainant, all counsel of record, and, when deemed appropriate, the local bar association or associations of the county or counties in which respondent resides and maintains an office, and of the county or counties from which the complaint arose.

(b) If the panel shall find and determine that the respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand; and such action shall be reported to the Secretary of the Board of Commissioners, who shall thereupon so notify the same persons and organizations that would have been notified if the complaint had been dismissed by said panel.

(c) If the panel shall find and determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, such exhibits as

may have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by it in connection with such proceedings, with the Secretary of the Board of Commissioners.

11. *Review by the Board of Commissioners; Private Reprimand.*

Whenever the panel in its report shall have recommended disbarment, suspension, or public reprimand, the Board of Commissioners, through its Secretary, shall, before acting upon such report, notify the respondent and his counsel, if any, of the time and place at which the Board will consider the report for the purpose of determining its action thereon, such notice to be given not less than thirty days prior to such meeting. And the respondent and his counsel shall have the right, and shall be so informed in said notice, to appear before the Board at said meeting and thereupon to submit briefs and be heard in oral argument in opposition to the recommendations of the panel. Like notice shall be given, and like opportunity to submit briefs and be heard in oral argument in support of the recommendations of the panel shall be afforded, to the complainant and his counsel, if any, and to the Attorney General's office where that office has participated in the hearing before the panel.

Upon consideration of the report of the panel, the Board of Commissioners may:

(a) refer the matter back to the panel for further hearing; or

(b) order a further hearing before the said Board of Commissioners; or

(c) proceed upon the certified report of the prior proceedings before the panel.

Upon its final review, the Board of Commissioners may either dismiss the complaint or find that the respondent is guilty of misconduct. If the Board shall determine that a private reprimand should be administered, it shall administer such reprimand. If the complaint is dismissed, or if a private reprimand is administered, the Secretary of the Board of Commissioners shall thereupon so notify the same persons and organizations that would have been notified if the complaint had been dismissed by the panel that heard the matter.

12. *Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review.*

If the Board of Commissioners shall determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a final certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, and such exhibits as may have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by the hearing panel and by the Board in connection with the proceeding, in the office of the Clerk of this Court; and the Secretary of the Board of Commissioners shall forthwith notify the respondent and the complainant, or their counsel, of such action, enclosing with such notice a copy of the Board's findings of fact and recommendations and a copy of the statement of expenses before mentioned.

13. *Court to Order Respondent to Show Cause.*

Upon the filing of such final report of the Board of Commissioners, this Court shall issue its order directed to the respondent, requiring him to show cause before this court at a time to be therein specified, but not less than forty (40) days after issuance of such order, why the report of the Board of Commissioners should not be confirmed and a disciplinary order entered. Copies of such order to show cause, certified by the Clerk of this Court, shall be served under his direction upon the respondent and the complainant, or their counsel, personally or by registered mail.

14. *Return of Respondent; Briefs.*

At least twenty (20) days before the date for showing cause stated in the order of this Court, the respondent shall make return to said order, setting forth his grounds of objection to the findings and recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report of said Board upon which the said order to show cause was issued, and shall file with the Clerk of this court the original and ten copies of such return, together with proof of service of the said return upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General of South Carolina, who shall thereafter participate in the proceeding in the public interest, whether or not he shall have been requested by the Chairman of the Board of Commissioners to participate in the earlier phases of the prosecution of the complaint. At the time of filing his

return as aforesaid, the respondent shall also file with the Clerk of this Court the original and ten copies of a brief in support thereof, together with proof of service of said brief upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General.

15. *Briefs on the Part of Complainant.*

Within fifteen (15) days after the filing of respondent's brief, the Attorney General and counsel for the complainant shall, jointly or severally, file with the Clerk of this Court the original and ten copies of such brief or briefs as they may deem necessary in answer thereto, together with proof of service thereof upon respondent or his counsel of record and upon the Secretary of the Board of Commissioners.

16. *Form of Return and Briefs.*

The return and briefs may be either printed or typewritten, mimeographed or machine duplicated. If printed, they shall conform to the requirements of Rule 5 of this Court; if typewritten, mimeographed or machine duplicated, they shall conform to the requirements of Rule 6.

17. *Review by Court.*

Upon failure of the respondent to make return to the order to show cause within the time hereinbefore prescribed, or after consideration of the return and such briefs as may have been filed in support of and in opposition to the same, and after hearing argument, if this court shall desire

to hear argument, thereabout, this court shall enter such order upon the matter as it may find proper, and may include in its order such provision for reimbursement of the actual and necessary expenses incurred by the hearing panel and by the Board of Commissioners as the court shall deem proper. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of this Court shall mail certified copies thereof: to the respondent, at his last known address; to the complainant; to all counsel of record; to the Board of Commissioners; to the local bar association or associations in the county or counties in which the respondent resides and maintains an office, and in the county or counties from which the complaint originated; to the Clerk of the Court of Common Pleas in each of said counties; and to the Clerk of the District Court of the United States for the district in which said counties are located.

18. *Proceedings Private Until Filed in Supreme Court.*

Unless and until otherwise ordered by this court, all proceedings and documents relating to complaints and hearings thereon and to proceedings in connection therewith shall be private, unless the respondent shall in writing request that they be public. All complaints shall be captioned "In The Matter of_____" (Name of respondent to be inserted); and except for the official records of the Board and of this court, all references to the respondent throughout any disciplinary proceeding under this Rule shall be by the use of the term "Anonymous", unless and until this court shall otherwise order.

No persons whomsoever in any way connected with a matter before the Board, including witnesses, counsel,

counsel's secretaries, Respondent, Board Members, Board employees, reporters or investigators, shall mention the existence of any such proceeding, nor disclose any information pertaining thereto or discuss any testimony or evidence therein except to persons directly involved, and then only to such extent as necessary for a proper disposition of the matter. Provided, however, any proceeding before the Board may be made public upon written request of the Respondent. Violation of this provision shall be deemed contempt of this Court and punishable as such. All persons attending any proceedings or taking part in any matter hereunder shall be advised of this provision upon the commencement thereof. All records and correspondence held by members of the Board at the conclusion of their respective terms of office shall be carefully screened by them. They shall deliver all essential records and correspondence, so held, to the Secretary for filing with the permanent records of the Commission, and destroy all non-essential records having no permanent or continuing effect.

19. *Quorum of Board or Hearing Panel.*

A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes; and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

20. *Service of Notices, Etc.*

Wherever in this rule provision is made for the service of any notice, order, report or other paper or copy thereof

upon any complainant or respondent or petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such complainant, respondent, or petitioner, either personally or by registered mail.

21. *Clerk is Agent for Service of Notices on Non-resident Attorneys.*

Service of any notice provided for in this rule upon any non-resident respondent who has been admitted to the practice of law pursuant to the rules of this court, or upon any resident respondent who, having been so admitted, subsequently becomes a non-resident or cannot be found at his usual abode or place of business in this state, may be made by the Secretary of the Board of Commissioners by leaving with the Clerk of this court a true and attested copy of such notice and any accompanying documents and by sending to the respondent, by registered mail, a like true and attested copy, with an endorsement thereon of the service upon the said Clerk, addressed to such respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as may be necessary to afford the respondent reasonable opportunity to appear and defend. The Clerk of this court shall keep a record of the day and hour of the service upon him of such notice and any accompanying documents.

22. *Members of Board May Issue Subpoenas and Order Depositions Taken.*

Each member of the Board of Commissioners shall have power to issue subpoenas and to administer oaths to witnesses. All such subpoenas shall be issued in the name and under the seal of this court, and shall be signed by a member of the Board of Commissioners. Any member of the Board of Commissioners may order the testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions; and such depositions may be used to the same extent as permitted in civil actions.

23. *Effect of Refusal to Obey Subpoena or to Testify.*

If any person subpoenaed as a witness pursuant to this rule shall refuse or neglect to obey said subpoena, to attend, to be sworn or to affirm, or to answer any proper question, he shall be deemed in contempt of this court and punishable accordingly.

24. *Rules of Evidence to be Observed.*

The rules of evidence shall be observed in the conduct of all hearings.

25. *Docket of Complaints.*

The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, and the same shall be retained permanently as a part of the records of the Board of Commissioners.

26. *When Petition for Reinstatement May be Filed.*

No petition for reinstatement to the practice of law shall be filed within two years after the entry of an order indefinitely suspending the petitioner from the practice of law in this State, or within two years after the denial of a petition for reinstatement filed by such petitioner.

27. *Contents of Petition for Reinstatement.*

Subject to the foregoing restrictions, any person who has been indefinitely suspended from the practice of law and who wishes to be reinstated may file with the Clerk of this court his verified petition, and ten (10) copies thereof, setting forth:

(a) the date when indefinite suspension was ordered, and, if there was a reported opinion concerning the same, the volume and page of the official reports of this court where such opinion appears;

(b) the dates upon which any prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, other than the petitioner and the Board of Commissioners, who were entitled under this Rule to receive from the Clerk of this court certified copies of the disciplinary order of this court resulting in the petitioner's suspension;

(d) the name of the county in which he resides at the time of the filing of the petition, and of each county in which he proposes to maintain an office if reinstated; and

(e) the facts upon which he relies to establish by clear and convincing proof that he has rehabilitated himself.

28. *Petition Referred to Committee on Character and Fitness.*

Unless the petition for reinstatement be summarily denied for insufficiency in form or substance, the Clerk of this court shall forward five (5) copies thereof to the Secretary of the Committee on Character and Fitness appointed under the rules of this court governing admission of persons to the practice of law in this State; and such petition shall be deemed to be referred, without court order, to said Committee.

29. *Action by Committee on Character and Fitness.*

The Committee on Character and Fitness shall, with all convenient dispatch, proceed to hold a hearing or hearings, take evidence concerning petitioner's character and his claim of rehabilitation, and report to this court the proceedings had before said Committee, together with the Committee's findings of fact and recommendations. Reasonable notice of all such hearings before the Committee shall be given to the petitioner or his counsel and to the President of the local bar association or associations in the county or counties in which the petitioner resides and in which he proposes to maintain an office in the event of his reinstatement. Such hearings may, in the discretion of the Committee, be public, and shall be public if the petitioner so requests in writing. Any interested person, any member of the bar, and any representative of the South Carolina Bar Association or of any local bar association may appear before the committee in support of, or in opposition to, the petition.

30. *Committee's Report to be Filed; Procedure Thereupon.*

The report of the Committee on Character and Fitness, and six (6) copies of the Committee's findings of fact and recommendations, shall be filed in the office of the Clerk of this court, who shall thereupon notify petitioner or his counsel of such filing and shall with such notice enclose a copy of the Committee's findings of fact and recommendations. If the Committee shall have recommended denial of the petition, the petitioner shall have ten (10) days from the date of his receipt of notice thereof from the Clerk within which to file with the said Clerk objections to the report and brief in support of such objections, together with five copies of such objections and brief; but no oral argument will be heard thereon. Upon consideration of the Committee's report and of such objections and brief as may have been filed by the petitioner concerning the same, the court shall enter such order as it may deem appropriate, and may include in such order such provision for reimbursement of the actual and necessary expenses incurred in connection with the proceedings as shall appear just and proper.

31. *Investigation at Instance of Chairman; Procedure Thereunder.*

(a) Whenever, from sources deemed by him reliable, the chairman of the Commission learns of an attorney (who is licensed to practice in South Carolina) engaging in practices in violation of his duty as such attorney, and the Chairman comes to the conclusion that an investigation should be made, he shall designate one member of the Commission to act as an investigator. The member so designated shall investigate these reported violations of duty, and for this

purpose he may call to his assistance such public investigating agencies as he may think proper. After making such investigation, should the investigator come to the conclusion that a complaint (as described in the section 7 hereof) should be made against the attorney investigated, he shall file such in his official capacity and be responsible for the prosection thereof to a conclusion.

(b) When a member of the Commission shall have been selected to investigate the conduct of a particular member of the Bar, he shall thereafter be disqualified to act as a member of the Commission insofar as such conduct of said member of the bar is concerned, otherwise than as such investigator and prosecutor as above set out.

32. *Rule to be Liberally Construed.*

The process and procedure under this rule shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objection, return, report or order, may be made at any time prior to final order of the court. Any party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule shall be liberally construed for the protection of the public, the courts, and the legal profession, and shall apply to all pending complaints, investigations and petitions whether the conduct involved occurred prior or subsequent to the effective date of this rule. To the extent that application of this rule to such pending proceedings may not be practicable, the procedure in force at the time this rule became effective

shall continue to apply.

Every communication, whether oral or written, made by or on behalf of any complainant to the Board of Commissioners or any hearing panel or member thereof, pursuant to this Rule, whether by way of complaint or testimony, shall be privileged; and no action or proceeding, civil or criminal, shall lie against any such person, firm or corporation by or on whose behalf such communication shall have been made, by reason thereof.

33. *The Board of Commissioners is empowered to adopt rules and regulations not inconsistent with this rule.*

Duplicated February 23, 1973.

APPENDIX D

October 18, 1973

PERSONAL AND CONFIDENTIAL

Mr. Thomas M. Spence
Attorney at Law
462 East Main Street
Laurens, South Carolina

Dear Mr. Spence:

A complaint filed against you before the Board of Commissioners on Grievance and Discipline has been referred to me for investigation. It stems from your handling of the claim of one Alfred Pitts, Jr. in the Estate of Willie Pitts.

I would be glad for you to call me and set a date when you can come to Manning to go over this matter with me so that I may make a report back to the Board.

Yours very truly,

/s/ Joseph O. Rogers, Jr.

JOR:nsc

APPENDIX E

March 10, 1975

PERSONAL & CONFIDENTIAL

Mr. Thomas M. Spence
Attorney at Law
Post Office Box 145
Homer, Georgia 30457

In the Matter of:
John W. Williams, Jr., Secretary of
The Board of Commissioners on Grievances
and Discipline, Complainant, vs.
Thomas M. Spence, Respondent.

Dear Mr. Spence:

The Panel has decided to recommend disbarment in your case. The Panel Report will be sent to you in the immediate future. This case will be heard before the full Board at its meeting in the Supreme Court Building on Friday, April 11, 1975, at 12:00 Noon. You will have one hour in which to appear in opposition to the Panel findings and you may file any briefs or memorandum as you see fit.

Yours very truly,
/s/ John W. Williams

tas
cc: Panel Members
Mr. A. Camden Lewis
No counsel of record
BY REGISTERED MAIL

APPENDIX F

John W. Williams, Secretary of The
Board of Commissioners on Grievances
and Discipline,

Complainant,

v.

Thomas M. Spence,

Respondent.

ORDER

The Board of Commissioners on Grievances and Discipline, having filed with this Court, pursuant to Section 12 of the Rule on Disciplinary Procedure, its final certified report of the proceedings before it in the above entitled matter, and it appearing therefrom that the said Board of Commissioners has found Thomas M. Spence guilty of misconduct as an attorney,

IT IS ORDERED that the said Thomas M. Spence be, and he is hereby, required to show cause before this Court in the Supreme Court Room, at 3:00 o'clock P. M., on Wednesday, June 11, 1975, why the said report of the Board of Commissioners should not be confirmed and such disciplinary order as this Court may deem proper be issued.

Let copies of this Order, certified by the Clerk of this Court, be forthwith served under the direction of the said Clerk upon the respondent and the complainant, or their counsel, personally or by registered mail.

Attention of the respondent and of the complainant is directed to the provisions of Sections 14, 15 and 16 of the aforementioned Rule.

/s/ John R. Moor C.J.
For the Court

York, South Carolina
May 1, 1975

CERTIFIED TRUE COPY
/s/ Frances H. Smith
Clerk, S. C. Supreme Court

APPENDIX G

STATE OF GEORGIA
COUNTY OF FULTON

The Supreme Court of South Carolina
And the Committee on Grievances and Discipline
vs.
Thomas M. Spence,
Respondent

MOTION FOR CONTINUANCE BECAUSE OF ILLNESS OF RESPONDENT

The Respondent moving under a special appearance moves the court, and prays that the court grant him a continuance of this cause to the next term of court, for the reason that he is ill, and confined to his home, and is unable to attend court; that his testimony and representation is absolutely material in the trial of this cause, and that he has a right to be present to show cause why he should not be disbarred; that this Motion is not asked by way of connivance, or for purpose of delay, and that this defendant believes that if granted a continuance that he will be able to be present at the next setting of trail, and this his cause will be materially injured if forced to trial without his presence.

Attached hereto is Affidavit in support of above entiled Motion.

/s/ Thomas M. Spence
Respondent

Subscribed and sworn before
me this 9 day of June, 1975.

/s/ Andrew N. Smith
Notary Public
State of Georgia
My Commission expires March 27, 1978.

Service accepted this 11th day of June 1975
at 1:10 P.M., o'clock.

Service accepted this 11th day of June 1975
at 11 A.M. o'clock

/s/ Frances H. Smith
Clerk of the Supreme Court
of South Carolina

STATE OF GEORGIA
COUNTY OF FULTON

The Supreme Court of South Carolina
and the Committee on Grievances and Discipline
vs.
Thomas M. Spence, Respondent

AFFIDAVID FOR CONTINUANCE BECAUSE OF ILLNESS OF RESPONDENT

Guy O. Overhart, being first duly sworn, deposes and says that he is a Physician and Surgeon, duly licensed to practice in the State of Georgia, and having his office at La Vista Medical Clinic, 1545 La Vista Road, N. E., Atlanta, Georgia, and that he has been treating Thomas M. Spence for a couple of years for High Blood Pressure. It has gone up considerably in the last few days.

He is to avoid any pressure, excitement or anxiety. To be in Court at this time would be extremely deterimental to his health.

It is recommended that he have no Court appearance at this time or for sixty (60) to ninety (90) days until his blood pressure is under control.

/s/ Guy O. Overhart, M. D.

Subscribed and sworn before me
this 9 day of June, 1975.

/s/ Andrew N. Smith
Notary Public
State of Georgia
My Commission Expires 3/, 27, 1978.